

Panaji, 25th September, 2003 (Asvina 3, 1925)

SERIES II No. 26



OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

No. 3

GOVERNMENT OF GOA

Department of Labour

Order

No. CL/Pub-Awards/2000/2001/2252

The following Award dated 4-5-2001 in Reference No. IT/8/90 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary.

Panaji, 23rd May, 2001.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/8/90

Shri Anthony Lobo,
Represented by Goa Trade &
Commercial Workers' Union,
Velho Bldg., 2nd Floor,
Panaji-Goa.

... Workman/Party I

V/s

M/s. Cosme Matias Menezes Ltd.,
Panaji-Goa.

... Employer/Party II

Workman/Party I represented by Adv. Shri Suhas Naik.
Employer/Party II represented by Adv. Shri. G. K. Sardessai.

Panaji, dated: 4-5-2001.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by Order dated 9-3-90 bearing No. 28/8/90-LAB referred the following dispute for adjudication of this Tribunal.

Whether the action of the management of M/s. Cosme Matias Menezes Limited, Panaji Goa, in terminating the services of their workman Anthony Lobo with effect from 25-7-87 is legal and justified?

If not, to what relief the workman is entitled?

2. On receipt of the reference a case was registered under No. IT/8/90 and registered A. D. notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workman/Party-I (for short workman) filed his statement of claim at Exh. 2. The facts of the case in brief as pleaded by the workman are that he was employed as a Peon with the employer-Party-II (for short employer) from 2-2-1976. That he received a chargesheet dated 28th July, 1978 wherein it was alleged that he had committed the theft of goods from the godown of the Party-II situated at Vasco da Gama, Goa and that thereby the workman had committed misconduct. That the workman replied to the said chargesheet by letter dated 8-8-1978 denying the allegations made against him. That an enquiry was conducted into the said chargesheet. That the workman requested that he should be allowed to be represented by an office bearer of Union or by an Advocate as the management was being represented by a learned person. That however the said request of the workman was not granted. The workman contended that the enquiry which was conducted against him was in total violation of the principles of natural justice and though by letter dated 10-8-78 he had requested for granting adjournment, the enquiry was proceeded ex parte against him. The workman contended that he was not

aware of the legalities and the procedure of the enquiry and therefore he could not cross examine the management witness. The workman stated that in the meantime he was acquitted in the criminal case filed against him which proved that he was not guilty of the charges levelled against him. The workman stated that thereafter he received an order terminating his services and no show cause notice was issued to him prior to the termination of his services. The workman contended that termination of his services by the employer is illegal and unjustified and he is entitled to be reinstated in service with full back wages.

3. The employer filed written statement at Exb. 3. The employer stated that on 25-7-78 the workman was sent to Vasco to assemble some Godrej furniture in the godown of the employer situated in the compound of St. Andrews Church at Vasco da Gama. The employer stated that at about 4.00 p.m. Mr. Krishna Shetye, Peon of Vasco General Store came to the Church compound along with one Mr. Redkar and they saw the workman coming out of the godown with 3 cartons of Lactogen tins and loading them in the rickshaw. The employer stated that the workman confessed to Mr. N. G. Lawnis, In-charge of the Vasco General Store that he had removed the goods from the godown without the permission and the authority. The employer stated that thereafter the workman was chargesheeted by letter dated 28-7-78 and thereafter domestic enquiry was held against him. The employer stated that the enquiry was conducted ex-parte against the workman on 23-9-78 as neither the workman nor any person on his behalf attended the enquiry. The employer stated that when the employer's, witnesses Mr. Lawnis and Mr. Krishna Shetye were being examined subsequently, the workman appeared and he was given the opportunity to cross examine the said witnesses but the workman declined to do so, and the enquiry was thereafter adjourned to 6-10-78. The employer stated that since the workman failed to appear on the said date the enquiry was closed after the employer had examined 2 more witnesses. The employer submitted that the enquiry Officer, submitted his findings dated 25-10-78 holding the workman guilty of the charges of theft, dishonesty and fraud and on considering the said findings of the enquiry officer and the past records of the workman and also considering the gravity of the misconduct committed by the workman, the employer decided to dismiss the workman from service and accordingly vide letter dated 21-11-78 workman was dismissed from service w.e.f. 23-11-78. The employer denied that the enquiry was conducted in violation of the principles of the natural justice or that the findings of the enquiry officer were not in accordance with the evidence on record. The employer stated that the order of dismissal passed against the workman is legal and justified and the workman is not entitled to any relief as claimed by him. The workman thereafter filed rejoinder at Exb. 4.

4. On the pleadings of the parties issues were framed at Exb. 5. After the issues were framed the case was

fixed for the evidence of the workman on the issue No. 1 as it was regarding the fairness of the enquiry conducted against the workman. Since the workman did not lead evidence on the issue No. 1 inspite of the opportunity given, the evidence of the workman was closed on 31-3-98. However subsequently the workman filed an application dated 28-4-98 praying for setting aside the order closing his evidence. After hearing the parties by order dated 11-12-98 the order dated 31-3-98 closing evidence of the workman was set aside. Thereafter the evidence of the workman was partly recorded on the issue No. 1. At this stage the parties submitted that the dispute between them was likely to be settled and accordingly the case was fixed on 18-4-2001 for filing the terms of settlement by the parties. On this date the workman appeared along with Adv. Shri Suhas Naik and Adv. Shri Sardessai appeared on behalf of the employer. They submitted that the dispute between the parties was amicably settled and they filed the terms of settlement dated 10-4-2001 at Exb. 9. Both the parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement which are duly signed by the parties and I am satisfied that the said terms are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 16-4-2001 Exb-9.

ORDER

The employer Party No. II agreed to pay to the Party No. I workman a sum of Rs. 37,000/- (Thirty seven thousand only) in full and final settlement.

In view of the above, the Party No. I does not wish to pursue the reference and treat the entire matter as settled.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
 Presiding Officer,
 Industrial Tribunal.

Order

No. CL/Pub-Awards/2000/2001/2253

The following Award dated 4-5-2001 in Reference No. IT/4/96 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary.

Panaji, 23rd May, 2001.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/4/96

Shri Raghu C. Gomes,
House No. 284, Conturlim Curca,
Tiswadi-Goa. Workman/Party I

V/s

M/s. Vishnoo V. Kamat Tarcar,
Below Vistar Hotel,
Afonso de Albuquerque Rd.,
Panaji-Goa. Employer/Party II

Party I – Represented by Adv. Shri A. G. Kalangutkar.
Party II – Represented by Adv. Shri P. J. Kamat.

Panaji, dated: 4-5-2001.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by Order dated 5-2-96 bearing No. 28/69/95-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Vishnoo V. Kamat Tarcar, Panaji Goa, in terminating from the services Shri Raghu C. Gomes, Meter Reader, with effect from 8-1-94 is legal and justified?

If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/4/96 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workman/Party-I (for short "workman") filed his statement of claim at Exh. 2. The facts of the case in brief as pleaded by the workman are that he was working with the Employer/Party II (For short, "Employer") at its Petrol Pump at Patto as a meter reader from 1-10-91. That initially he was working as a Pump Attendant and about 5 months thereafter he was promoted to the post of meter reader and his salary was fixed at Rs. 1000/- per month. That though his salary was fixed at Rs. 1000/- p.m. the employer used to issue to him receipt of Rs. 500 showing that his salary was Rs. 500/- p.m. That the employer did not pay to him his salary for the period from July, 1993 to January, 1994. That on 9-1-94 the employer terminated the services of the workman without assigning any reasons and before terminating his services he was not issued any memo nor any enquiry was held against him. The workman contended that termination of his services by the employer is illegal and unjustified. He claimed that he is entitled to reinstatement in service with full back wages and other benefits.

3. The employer filed written statement at Exh. 4. The employer denied that the workman was working as a

Meter Reader since 1-10-91. The employer stated that the workman was appointed as Pump Attendant whose duty was to fill the petrol and inform the meter reading to the cashier or the person handling the cash and bills. The employer denied that the workman was promoted to the post of meter reader and that his salary was fixed at Rs. 1000/- p.m. The employer denied that though the workman was paid Rs. 1000/- receipt of Rs. 500/- was issued to the workman instead of Rs. 1000/-. The employer denied that the workman was not paid his salary for the period from July, 1993 to January, 1994. The employer admitted that the workman worked from 1-10-91 till 8-1-94. The employer denied that the services of the workman were terminated from 9-1-94. The employer stated that the workman did not report for work from 9-1-94 and inspite of the offer given to the workman in the conciliation proceedings to report for work immediately the workman did not report for work. The employer stated that the workman was still free to report for work. The employer denied that the workman is entitled to any relief as claimed by him.

4. On the pleadings of the parties, following issues were framed.

1. Whether the Party I proves that he was employed with the Party II as a meter reader and his last drawn salary was Rs. 1000/- per month ?

2. Whether the Party I proves that the Party II terminated his services w.e.f. 8-1-94 which is illegal and unjustified?

3. Whether the Party II proves that the Party I abandoned his services from 9-1-94?

4. Whether the Party I is entitled for any relief?

5. What Award?

5. My findings on the issues are as follows:

Issue No.1: Party I was employed as a meter reader and his last drawn salary was Rs. 500/- per month.

Issue No. 2: In the negative.

Issue No. 3: In the affirmative.

Issue No. 4: In the negative.

Issue No. 5: As per order below.

REASONS

6. Issue No.1: The contention of the workman is that he was initially working with the employer as pump attendant and subsequently he was promoted to the post of meter reader after about 4 months of his employment and his salary was increased from Rs. 500/- p.m to Rs. 1000/- per month. The contention of the employer on the other hand is that the workman was employed as pump attendant. The workman has examined himself whereas the employer has examined its Accountant Mr. Mohandas Kamat. The workman in his deposition stated that he was employed with the employer at its Petrol Pump at Patto, Panaji and his work was to fill petrol or diesel in the tanks of the vehicles.

He stated that after about 4 months he was promoted as meter reader and his salary was increased from Rs. 500/- p.m to Rs. 1000/- p.m. He produced the certificate dated 4-2-92 Exb. W-1 given in his favour by the employer. This certificate mentions that the workman is working with the employer as a meter reader at their Petrol Pump at Patto, Panaji. This certificate is not disputed by the employer. Therefore the workman has succeeded in proving that he was working at the Petrol Pump of the employer at Patto, Panaji as a meter reader. However, the contention of the workman that his last drawn wages were Rs. 1000/- p.m is not supported by any evidence. The workman has stated in his deposition that when he was employed his wages were Rs. 500/- p.m. and when he was promoted as meter reader his wages were increased to Rs. 1000/- p.m. In his cross examination he admitted that in the certificate Exb. W-1 it is not mentioned that he was promoted as a meter reader, nor it is mentioned that as a meter reader his salary was Rs. 1000/- p.m. He admitted in his cross the application filed by him before the Labour Commissioner, Panaji, against the Party II. The said application is dated 14-1-94 and it is in the records of the conciliation file No. IRM/CON(14)/94 Exb. E-1. The said application has been made by the workman after his services were terminated on 6-1-94 as it is dated 14-1-94 and he has demanded reinstatement in service. In this application the workman has stated that in the beginning his salary was Rs. 500/- p.m. and that from February, 1992 it was raised to Rs. 1000/- p.m. In the said application he has further stated that his signature on the Payment Register was being obtained mentioning salary as Rs. 500/- p.m. In the absence of any evidence from the workman that his salary was increased to Rs. 1000/- p.m. it has to be accepted that the last drawn salary of the workman was Rs. 500/- p.m and not Rs. 1000/- p.m. The employer's witness Mr. Mohandas Kamat has also stated in his deposition that the monthly salary of the workman was Rs. 500/- p.m. I, therefore, hold that the workman has failed to prove that his last drawn salary was Rs. 1000/- p.m. In the circumstances I hold that the workman has succeeded in proving that he was employed with the employer as a meter reader at their Petrol Pump at Patto, Panaji, but has failed to prove that his last drawn salary was Rs. 1000/- p.m. His last drawn salary was Rs. 500/- p.m. I, therefore answer the issue No. 1 accordingly.

7. Issue Nos. 2 and 3: The workman has raised the dispute that his services were terminated with effect from 8-1-1994. His case is that the said termination is illegal and unjustified. The contention of the employer on the other hand is that the services of the workman were not terminated but he did not report for work from 9-1-94 and thereby abandoned his services. The workman has examined himself. He stated that on 8-1-94 he was called at the office to collect his arrears of salary and found that the employer had already prepared two vouchers for two months salary, which he signed. He stated that at that time Mr. Sumant Tarcar, the son of the Partner Mr. Padmanabh Tarcar came there and gave slaps on him stating that no salary would be paid to him

and that his services stood terminated. In his cross examination the employer denied that he was called at the office on 8-1-94 to collect his salary or that his signature was obtained on vouchers or that Mr. Sumant Tarcar came to the office and gave slaps on him stating that salary would not be paid to him and that his services stood terminated. The employer suggested to the workman in his cross examination that he worked till 8-1-94 and from 9-1-94 he did not report for work. The workman denied these suggestions. The employer's witnesses Mr. Padmanabh Tarcar and Mr. Mohandas Kamat denied in their statements that the workman was slapped by Mr. Sumant Tarcar on 8-1-94 or that he told the workman not to report for duty. They have stated that the workman worked till 8-1-94 and that thereafter he remained absent. From the above evidence it can be seen that the defence which the employer has taken is that the services of the workman were not terminated but he did not report for work from 9-1-94. This defence was taken by the employer also in the conciliation proceedings as can be seen from the records of the conciliation proceedings produced at Exb. E-1.

8. Since the employer took the specific defence that the workman remained absent from 9-1-94 and thereby abandoned his services, it is to be seen whether the employer has proved this fact. Identical facts had arisen before the Bombay High Court in the case of Competition Printing Press v/s Shriut Jai Prakash Singh and another reported in 2001 I CLR 948. In this case the employee lodged a complaint on 16-11-89 with the Government Labour Officer complaining that the Petitioner Employer had illegally terminated his services w.e.f 10-11-89. The Labour Officer called both the parties on 29-11-89 to resolve their dispute. On that date the Petitioner Employer submitted that the employee himself was remaining absent and his services were never terminated and that he could report for work with continuity in service. The employee refused to get reinstated with continuity of service and insisted for back wages from 10-11-89 to 29-11-89. The Petitioner Employer was not willing to pay the aforesaid amount of back wages on the ground that his services were not terminated and hence the Petitioner Employer was not liable to pay the so called back wages. In the conciliation proceedings the Petitioner Employer repeated his stand that the services of the employee were not terminated and the employee started remaining absent and never joined nor came back inspite of umpteen number of offers made to him to come back and attend the employment. The Bombay High Court held that the Petitioner Employer had proved to the hilt that from the day first before the Labour Officer, reinstatement without back wages was offered to the workman but he refused to accept the said offer and insisted for 19 days wages. The High Court held that the Petitioner Employer had rightly refused the demand of the employee for 19 days wages as according to the Petitioner Employer the employee himself had remained absent from 10-11-89 and that there was no termination of his employment by the Petitioner Employer. The High Court held that if the Petitioner Employer had terminated the services, no offer

of reinstatement would have been made throughout, constantly and continuously even till the stage of proceedings before the Labour Court and that even the employee had admitted in his oral evidence that such offers were made to him and he did not accept the same as there was no offer of back wages and that he was not prepared to join his duty without back wages. The High Court held that this obstinate and adamant attitude on the part of the employee clearly indicated that he himself had abandoned his employment by remaining absent from 10-11-89. The High Court held that no genuine and bonafide employee who was aggrieved by the illegal order of termination would deny the offer of reinstatement and would not readily give up the valuable job for the sake of few days wages. The High Court further held that the employee could have accepted reinstatement before the Government Labour Officer and even before the conciliation officer and prayed for referring the dispute regarding the entitlement of back wages. The High Court also held that the employee could have accepted the offer of reinstatement made by the Petitioner Employer in the written statement even before the Labour Court and he could have made such an application to the Labour Court reserving his right to get back wages and joining the employment without prejudice to the above said right. The High Court held that the conduct of the employee was totally unreasonable in refusing to accept reinstatement without back wages on the 1st date of hearing before the Government Labour Officer. The High Court set aside the award and the order of the Labour Court holding that the Petitioner Employer had not terminated the employment of the employee and that he had remained absent from 10-11-89 and had not accepted the offer of reinstatement made by the Petitioner Employer and as such was not entitled to reinstatement and back wages.

9. In the present case also the workman had complained to the Labour Commissioner on 14-1-94 that his services were illegally terminated by the employer, as can be seen from the records of the conciliation proceedings produced at Exh. E-1. The workman had contended that he was called at the office of the employer on 8-1-94 and Mr. Sumant Tarcar, the son of Partner, Mr. Padmanabh Tarcar slapped him and told him not to report for work. This contention of the workman was denied by the employer in the written statement as well as in their evidence. The workman did not lead any evidence to prove his above contention. Therefore there is no evidence from the workman proving that he was slapped by Mr. Sumant Tarcar on 8-1-94 and that he was told not to report for work. In the complaint to the Labour Commissioner dated 14-1-94 the workman did not mention that he was slapped by Mr. Sumant Tarcar on 8-1-94 and was asked by him not to report for duty. The workman has made the above allegations for the first time in his evidence. Even in his claim statement he did not make the above allegations. In the circumstances, the above contentions of the workman cannot be accepted. Though the reference states that the workman's services are terminated from 8-1-94, the

complaint dated 14-1-94 to the Labour Commissioner as well as in his statement of claim stated that he worked till 8-1-94 and his services were terminated from 9-1-94.

10. The conciliation records show that the Asst. Labour Commissioner had fixed the meetings of the parties on 24-3-94. On this date the employer had stated that the services of the workman were not terminated and that the workman had suddenly remained absent. The employer had stated that since the services of the workman were not terminated he was free to attend the work at any time. It is recorded in the minutes of the said meeting that the workman refused to accept the said offer unless his wages at the rate of Rs. 1000/- per month from 1-7-93 were paid. It is also recorded that according to the employer, the wages of the workman were Rs. 500/- p.m. and the employer had stated that if there was dispute about non payment of wages, the same could be referred to the Industrial Tribunal and in the meantime the workman is free to attend the duties. The minutes of the meeting dated 5-4-94 show that again the offer of joining the services was given to the workman. The employer had again stated that the salary of the workman was Rs. 500/- p.m. and not Rs. 1000/- p.m. and that his salary from July, 1993 was paid. The workman however again refused to accept unless his back wages from July, 1993 were paid. The above facts have been admitted by the workman in his cross examination. In his evidence he admitted that in the meeting held on 24-3-94 the employer had again given to him offer that he should join the services and he refused to do so unless his back wages are paid. He however, admitted that in the meetings held on 5-4-94 he again stated before the conciliation officer that unless his wages were paid he would not join the duties. The workman in his evidence has tried to set up a case that on 6-4-94 he went to report for duties but the Manager did not allow him to do so. He has however admitted in his cross examination that after 5-4-94, next date of the meeting was 19-4-94 and that on this date he did not state to the Conciliation Officer that he was not allowed to report for work on 6-4-94 nor did he make written complaint to him about the same. Therefore in the absence of any evidence from the workman his contention that he reported for work on 6-4-94 and that he was not allowed to do so by the Manager cannot be accepted. The evidence discussed above establishes that the workman was given the offer to join the services in the course of the conciliation proceedings and the workman refused to accept the said offer. In the written statement filed before this Tribunal the employer had again reiterated that the workman was free to join the duties as his services were not terminated. Even during the pendency of the dispute before this Tribunal the workman did not accept the offer given by the employer of joining the duties. As held by the Bombay High Court in the case of Competition Printing Press (Supra) the workman could have very well accepted reinstatement before the Conciliation Officer and asked for referring the dispute regarding entitlement of his back wages. The workman could have also accepted the offer of

reinstatement made by the employer in the written statement before this Tribunal and could have made an application before the Tribunal reserving his right to get back wages and join the services without prejudice to the above said rights. As held by the Bombay High Court in the above referred case, the conduct of the workman is totally unreasonable in refusing to accept reinstatement without back wages and the adamant and obstinate conduct on the part of the workman clearly indicates that his services were not terminated by the employer but he himself had abandoned the services by remaining absent from 9-1-94. Therefore applying the principles laid down by the Bombay High Court in the case of Competition Printing Press (Supra) I hold that the workman failed to prove that the employer illegally terminated his services from 8-1-94 or from 9-1-94. I further hold that the employer has succeeded in proving that the workman abandoned his services by remaining absent from 9-1-94. In the circumstances, I answer the issue No. 2 in the negative and 3 in the affirmative.

11. Issue No. 4: This issue pertains to the relief to be granted to the workman if any. It has been held by me that the workman has failed to prove that the employer terminated his services illegally and without justification from 8-1-94 or from 9-1-94. It has been further held by me that the workman had abandoned his services from 9-1-94 by remaining absent. This being the case, as held by the Bombay High Court in the case of Competition Printing Press (Supra) the workman will not be entitled to any relief. I, therefore hold that the workman is not entitled to any relief and hence I answer the issue No. 4 in the negative.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the management of M/s. Vishnoo V. Kamat Tarcar, Panaji-Goa, did not terminate the services of the workman, Shri Raghu C. Gomes, w.e.f. 8-1-94. It is hereby further held that the workman, Shri Raghu C. Gomes abandoned the services by remaining absent from 9-1-94. It is hereby further held that the workman, Shri Raghu C. Gomes is not entitled to any relief.

No order as to cost. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/2000/2001/2251

The following Award dated 3-5-2001 in Reference No. IT/68/2000 given by the Industrial Tribunal,

Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary.

Panaji, 23rd May, 2001.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. Case No. IT/68/2000

Shri Sher Bahadur,
Rep. by the President,
The Goa MRF Employees' Union,
Saidham, Dhavalimol,
Ponda-Goa.

... Workman/Party I

V/s

M/s. MRF Limited,
P. O. Box No. 1, Bazaran,
Usgao, Ponda-Goa.

... Employer/Party II

Workman/Party I present in person.

Employer/Party II represented by Adv. Shri G. K. Sardessai.

Panaji, dated: 3-5-2001.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa by Order dated 22nd September, 2000 bearing No. IRM/CON/PONDA/(271)/1999/4762 referred the following dispute for adjudication of this Tribunal.

1) Whether the action of the management of M/s. MRF Limited, Usgao, Ponda-Goa, in awarding punishment to Shri Sher Bahadur of two days suspension from work on 15-4-1998 and 16-4-1998, without wages, is legal and justified?

2) If not, to what relief the workman is entitled?

2. On receipt of the reference a case was registered under No. IT/68/2000 and registered A.D. notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workman/Party I (for short Union) filed the statement of claim at Exh. 4. The facts of the case in brief as pleaded by the Union are that since the formation of the union the employer/Party-II (for short employer) has been attempting to

disrupt the unity of the workmen and of late has been causing harassment and victimization to the office bearers of the union and its other members on account of their legitimate trade union activities. That the harassment included illegal changes in service conditions, unjustified and unwarranted suspensions, issuing false chargesheets etc. That by letter dated 19-11-97 the workman Shri Sher Bahadur was issued a suspension order pending enquiry and thereafter he was issued a chargesheet dated 24-11-97 alleging that the said workman had failed to come to Savdhan position instead of Vishram position while speaking to his superiors and also that he spoke in an arrogant tone to his superiors. That thereafter an enquiry was held against the said workman into the said chargesheet. The union contended that the enquiry was not conducted in a fair and proper manner against the workman and he was deprived of his legitimate right of being defended by a person of his choice and that the enquiry was conducted in violation of the principles of natural justice. That the workman was not supplied the copy of the findings of the enquiry officer before imposing the punishment on him nor he was given the opportunity to submit his explanation. The union contended that findings given by the enquiry officer are perverse as they are not based on the evidence on record. The union also contended that the punishment awarded to the workman of 2 days suspension from work on 15-4-98 and 16-4-98 without wages is illegal and unjustified. The union contended that the punishment imposed on the workman is by way of victimisation and unfair Labour practice. The union therefore claimed that the order of punishment imposed on the workman Shri Sher Bahadur be set aside.

3. The employer filed written statement at Exb. 5. The employer admitted that the chargesheet dated 24-11-97 was issued to the workman Shri Sher Bahadur alleging certain acts of misconduct against him. The employer denied that the charges made against the workman were false or that the chargesheet was issued to him by way of victimisation or to harass him because of his trade union activities. The employer stated that the workman has submitted his explanation to the chargesheet vide letter dated 12-12-97 and since the explanation was found to be unsatisfactory domestic enquiry was conducted against the workman. The employer denied that the enquiry was not conducted in a fair and proper manner or that it was conducted in violation of the principles of natural justice. The employer stated that the workman was given sufficient opportunity to defend himself in the enquiry and the enquiry officer after considering the evidence on record submitted his findings holding the workman guilty of the charges. The employer stated that the misconduct which was proved against the workman warranted extreme punishment of dismissal from the services but a lenient view was taken in the matter and the workman was given a lighter punishment of suspension from work for 2 days without wages. The employer stated that the punishment imposed on the workman is legal and justified and therefore the same punishment is not liable to be set aside as claimed by the workman.

4. After the written statement was filed the case was fixed for filing the rejoinder by the union. The employer however submitted that the workman had approached the management with a proposal to settle the dispute and that the dispute was likely to be settled. Accordingly on 21-3-2001 Shri Chodnekar, the Personnel Officer of the employer remained present and filed the settlement at Exb. 6 and stated that in terms of the said settlement the dispute stood resolved. Adv. Shri Menezes representing the workman submitted that he wanted to confirm about the settlement with the workman and accordingly at his request the case was fixed on 28-3-2001 at 10.30 a.m. On this date Adv. Shri Menezes appeared along with the workman Shri Sher Bahadur. Adv. Shri Menezes filed an application for permission to withdraw his appearance from the case along with the notice given by him to the workman Shri Sher Bahadur in that respect. The workman Shri Sher Bahadur admitted that he had received the said notice given by Adv. Shri Menezes. Accordingly order was passed on the application allowing Adv. Shri Menezes to withdraw his appearance in the case on behalf of the workman. The workman Shri Sher Bahadur admitted that he has signed the settlement dated 21-3-2001 Exb. 6 with the employer and he submitted that since his dispute was amicably settled he does not want to pursue further with the matter. I have gone through the terms of the settlement dated 21-3-2001 signed between the parties. As per the said terms of the settlement, the parties have agreed that the workman Shri Sher Bahadur will have continuity in service with the employer at its Goa unit and that the workman will not be eligible for any wages for the period. Since the dispute between the parties has been amicably settled in terms of the settlement dated 21-3-2001 the dispute does not exist and consequently the reference does not survive.

In the circumstances I pass the following order.

ORDER

It is hereby held that the reference does not survive since the dispute does not exist in view of the settlement dated 21-3-2001 Exb. 6 signed between the parties.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/2001/2455

The following Award dated 9-5-2001 in Reference No. IT/14/2000 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the

provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary.

Panaji, 8th June, 2001.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref No. IT/14/2000

Shri Manuel Dominic Fernandes,
Bouttam Waddo, Assagao,
Bardez-Goa. ... Workman/Party I

V/s

Mrs. Monica Carvalho,
Paradise, 98/2, L.T. Nagar,
Road No. 6, Goregao West,
Mumbai-62. ... Employer/Party II

Workman/Party I - Represented by Adv. Shri Suhas Naik.

Employer/Party II - Ex parte.

Panaji, dated: 9-5-2001.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by Order dated 1st February, 2000 bearing No. IRM//CON-MAP/(121)/99/619 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the Employer Mrs. Monica Singh alias Carvalho, the owner of Amchem Xap Khannen, Morod, Mapusa, Bardez-Goa, in refusing employment of Shri Manuel Dominic Fernandes, with effect from 10-12-1998, is legal and justified?

2) If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/14/2000 and registered A/D notice was issued to the parties. The Workman-Party I (for short, "Workman") was served with the said notice and was represented by Adv. Shri Suhas Naik. The registered A/D notice sent to the Employer-Party II (for short, "Employer") was returned unserved with postal remark, "Un-Served". The employer was therefore ordered to be

served by sending the notice under certificate of posting. Accordingly the notice under certificate of posting was sent to the employer requiring her to attend the hearing on 5-6-2000 at 10.30 a. m. Inspite of the said notice the employer remained absent and therefore the case was ordered to be proceeded ex-parte against the employer on 5-6-2000.

2. The workman filed statement of claim at Exb. 4. The facts of the case in brief as pleaded by the workman are that he was working as printer cum compositor with the employer on monthly salary of Rs.1800. That the employer is the proprietor of the Printing Press known as M/s. Amchem Xap Khannen and the same is situated at Morod, Mapusa, Goa. That the workman was doing the work of printing and composing from the date of his employment i.e from 2-5-89 till the date of refusing employment to him on 10-12-98. That the employer refused employment to the workman from 10-12-98 without assigning any reasons and inspite of several requests were made by the workman to allow him to report back for duty, the employer turned down his request. That thereafter the workman by letter dated 8-7-91 raised the industrial dispute before the Asst. Labour Commissioner and the dispute was admitted in conciliation. That the Asst. Labour Commissioner sent several notices to the employer but none appeared in the conciliation proceedings on behalf of the employer as a result of which the conciliation proceedings ended in failure and the failure report dated 27-9-99 was submitted to the Government by the Asst. Labour Commissioner. The workman contended that the refusal of employment to him by the employer is illegal and unjustified as no warning, memo, show cause notice or chargesheet was issued to him before refusing the employment to him. The workman contended that the employer refused employment to him in violation of the mandatory provisions of the Industrial Disputes Act, 1947. The workman therefore claim that he is entitled to reinstatement in service with full back wages and other consequential benefits. Since the case had proceeded ex-parte against the employer, ex-parte evidence of the workman was recorded.

3. In the present case the workman has examined only himself. He has stated that he was working with the employer as a printer-cum-compositor w.e.f. 2-5-1989 and his salary was Rs. 1800/- p.m. He has stated that he worked with the opponent continuously from the date of his employment till the date of termination of his service on 10-12-98. He has stated that by letter dated 8-7-99 he raised dispute about refusal of employment to her and non payment of his wages. He has produced the said letter at Exb. W-1. He has also produced the failure report dated 27-9-99 at Exb. W-2. He has produced the certificates issued by the Sales Tax Authorities at Exb. W-3 colly. He has stated that the employer had received an order for printing the books from M. R. International and produced the cash memo dated 12-11-98 at Exb. W-4 issued by the employer in favour of M. R. International. He also stated that at the time of refusal of employment to him he was not given any notice nor

he was given notice or retrenchment compensation, and also no charge sheet was issued to him nor enquiry was held against him. He has stated that since termination of his service is illegal and unjustified he is entitled to reinstatement in service with full back wages.

4. The deposition of the workman has gone unchallenged as the case has proceeded ex-parte against the employer. It is the contention of the workman that employment was refused to him by the employer from 10-12-98 and the same is illegal because he was not given notice or notice pay or retrenchment compensation prior to refusal of employment to him. The workman has produced the letter dated 8th July, 1999 at Exb. W-1 and the failure report dated 27-9-99 at Exb. W-2. The letter dated 8th July, 1999 is the letter by which he raised the dispute before the Asst. Labour Commissioner, Mapusa. In this letter the workman has clearly stated that the employer suddenly closed the establishment from 10th December, 1998 and thereby refused employment to him. In the failure report dated 27-9-99 Exb. W-2 also it is mentioned that the workman had stated that the employer suddenly closed the establishment and refused employment to him w.e.f. 10-12-1998. Therefore there is an admission on the part of the workman himself that the employer closed her establishment from 10-12-98. The cash memo dated 12th November, 1998 Exb. W-4 issued by the employer in favour of M. R. International is prior to the date of closure of the establishment. The deposition of the workman was recorded on 15-12-2000. Nowhere in the deposition he stated that the employer continues to run her business or that she started her establishment again after 10-12-98. This shows the intention and bonafides of the employer in closing the establishment as, on the date when the deposition of the workman was recorded more than two years had passed since the time the establishment was closed. The Supreme Court in the case of General Labour Union (Red Flag) Bombay v/s B. V. Chavan and others reported in 1985 LIC 726 has held that during of closure is a significant fact to determine the intention and bonafides of the employer at the time of closure. It is therefore evident that the refusal of employment to the workman from 10-12-98 is on account of the bonafide closure of the establishment.

5. The workman has raised the contention that prior to refusal of employment he was not given notice, nor he was given notice pay or retrenchment compensation. As mentioned earlier, the services of the employee were not retrenched by the employer. The refusal of employment was on account of closure of the establishment. In the case of retrenchment unless prior conditions as laid down under Sec.25F of the I.D. Act, 1947 are complied with, the retrenchment is illegal. The Supreme Court in the case of Santosh Gupta v/s State Bank of Patiala reported in AIR 1980 1219 has held that the termination of service of the workman as a consequence of closure is to be treated as retrenchment for the purpose of notice compensation etc. This means that it is treated as retrenchment only for the purpose

of notice and payment of compensation as per Sec.25F of the Industrial Disputes Act, 1947. In the case of M/s Avon Services Production Agency Pvt. Ltd., reported in AIR 1979 SC 170, the Supreme Court has held that giving of notice and payment of compensation as provided under Sec.25F of the Act is not a condition precedent in the case of closure as otherwise it is in the case of retrenchment. This being the case the closure does not become illegal for not giving prior notice or for not paying compensation. There is no evidence on record to show that the workman was paid closure compensation and benefits arising out of closure at the time when employment was refused to him. In the circumstances, I hold that refusal of employment to the workman w.e.f. 10-12-98 is on account of closure of the establishment by the employer, and hence the said refusal is not illegal and unjustified. I, further hold that the workman is entitled to closure compensation/benefits arising out of the closure of the establishment by the employer.

Hence, I pass the following order.

ORDER

It is hereby held that the refusal of employment to the workman Shri Manuel Domnic Fernandes by the employer Mrs. Monica Singh alias Carvalho, the owner of Amchem Xap Khannen, Morod, is on account of the closure of the establishment and hence the said refusal of employment is legal and justified. It is hereby further held that the workman Shri Manuel Domnic Fernandes is entitled to closure compensation/benefits arising out of the closure of the establishment.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/2001/2675

The following Award dated 28-5-2001 in Reference No. IT/113/99 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary.

Panaji, 20th June, 2001.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. Case No. IT/113/99

Shri K. Shrinivas Kumar,
Rep. by the General Secretary,
Gomantak Mazdoor Sangh,
3rd Floor, Shetye Sankool,
Tisk, Ponda-Goa.

... Workman/Party I

V/s

The Director,
M/s. Goa Invescast Limited,
105-106, Kundaim Industrial Estate,
Kundaim, Taluka, Ponda-Goa. ... Employer/Party II

Workman/Party I - represented by Shri P. Gaonkar.

Employer/Party II - represented by Shri A. M. Karnik.

Panaji, dated: 28-5-2001.

A W A R D

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 8-9-1999 bearing No. IRM/CON/P/(169)/97/4302 referred the following dispute for adjudication of this Tribunal.

(1) Whether the action of the management of M/s. Goa Invescast Limited, Kundaim-Goa, in refusing the employment to Shri K. Shrinivas Kumar, with effect from 1-8-1997, is legal and justified?

2) If not, to what relief the workman is entitled?

2. On receipt of the reference a case was registered under No. IT/113/99 and registered A.D. notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I was represented by Shri P. Gaonkar and the employer/Party II was represented by Shri A. M. Karnik. The workman/Party I (for short workman) filed his statement of claim at Exb-4. The facts of the case in brief as pleaded by the workman are that he was working with the employer/Party II (for short employer) from 1-8-95 as Asst. Tool and Design and he continuously worked with the employer for more than 2 years. That on 1-8-97 the workman was called by the Director of the employer in his chamber at about 2.00 p.m. and after locking the door resignation was obtained from him forcibly by the Director. That vide letter dated 2-8-97 the workman withdrew the resignation letter obtained by the Director on 1-8-97. That inspite of the withdrawal of the resignation the employer did not allow the workman to

resume his duties. That the workman approached the union namely Gomantak Mazdoor Sangh who raised the dispute vide letter dated 4-8-97 and the conciliation proceedings ended in failure as no settlement could be arrived at. The workman contended that before termination of his services no enquiry was conducted nor he was paid his legal dues in accordance with the provisions of the Industrial Disputes Act, 1947. The workman therefore contended that termination of his services by the employer is illegal and unjustified and as such he is entitled to reinstatement in service with full back wages and continuity of service.

3. The employer filed written statement at Exb-5. By way of preliminary objections, the employer stated that the statement of claim is signed by the General Secretary of the Union and not by the workman. The employer stated that the reference is bad in law and not maintainable as the employer did not refuse employment to the workman but he resigned from service of his own. The employer stated that the workman did not raise any demands against the employer nor raised any dispute before the Asst. Labour Commissioner, Ponda. The employer stated that the representative union of the employees in the establishment of the employer is All India Trade and Commercial Workers Union. The employer denied that any letter dated 2-8-97 was received by the employer from the workman withdrawing his resignation letter. The employer denied that the resignation letter dated 1-8-97 was obtained from the workman by the Director of the employer by force. The employer stated that the workman's resignation was accepted by the employer and he was paid his legal dues and the workman has signed on the cash voucher in acknowledgment of having received the amount in full and final settlement of his legal dues. The employer stated that since the workman has resigned from his service on his own accord the reference is liable to be rejected. Thereafter the workman filed rejoinder at Exb-6.

4. On the pleadings of the parties issues were framed at Exb. 7 and thereafter the case was fixed for recording the evidence of the workman. The workman was given several opportunities to lead his evidence in the matter and ultimately last opportunity was given to the workman to lead evidence on 13-12-2000 at 10.30 a.m. On this date Shri P. Gaonkar representing the workman appeared and submitted that inspite of the notice given by him to the workman, the workman did not approach him and therefore he was unable to lead evidence on behalf of the workman. In view of the above fact the evidence of the workman was closed on 13-12-2000. Shri A. M. Karnik representing the employer submitted that the employer does not want to lead any evidence in the matter as the burden was on workman to prove that his services were terminated or that the employment was refused to him from 1-8-97.

5. The reference of the dispute was made by the Government at the request of the workman as his contention was that the employer had refused

employment to him illegally from 1-8-97. It is a settled law that the party who challenges the action of the employer the burden lies on that party to prove the illegality of the said action. The Allahabad High Court in the case of V. K. Raj Industries V/s. Labour Court and others reported in 1981 (29 FLR 194) has held that the proceedings before the Industrial court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court and the principles underline the said Act are applicable. The High Court has held that it is well settled law that if the party challenges the validity of an order, burden lies upon him to prove the illegality of the order and if no evidence is produced the parties invoking the jurisdiction must fail. The High Court has further held that if the workman fails to appear or to file written statement or to produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he would not be entitled to any reliefs. The Bombay High Court, Panaji Bench in case Law V.N.S. Engineering Services V/s Industrial Tribunal, Goa, Daman and Diu and another reported in FJR Vol. 71 at page 393 has held that the obligation to lead evidence to establish an allegation is on the party making an allegation the test being that he who does not lead evidence must fail. The Bombay High Court further held that the provisions of Rule 103 of the Industrial Disputes (Central) Rules, 1957 clearly indicates that the party who raises an industrial dispute is bound to prove the contentions raised by him and the Industrial Tribunal or the Labour Court would be erring in placing the burden of proof on the other party to the dispute.

6. In the present case the dispute was raised by the workman that he was illegally refused employment by the employer from 1-8-97 and the reference was made by the Government at his instance. Therefore applying the principles laid down by the Bombay High Court and the Allahabad High Court in the above referred cases, the burden was on the workman to prove that the action of the employer in refusing employment to him from 1-8-97 was illegal and unjustified. Infact though it was the contention of the workman that the employer illegally refused employment to him from 1-8-97, the contention of the employer was that the workman was not refused employment but he had voluntarily resigned from service from 1-8-97. The workman in his statement of claim has stated that the Director of the employer had taken his resignation letter dated 1-8-97 forcibly and that he had withdrawn his resignation letter by letter dated 2-8-97. The employer in the written statement had denied that the resignation letter was obtained by force or that the workman had withdrawn his resignation by letter dated 2-8-97. In view of the above, the burden was on the workman to prove that the resignation letter was obtained by the employer from him forcibly and also that he had withdrawn the resignation letter which was obtained from him by the employer forcibly. As mentioned earlier no evidence whatsoever has been lead by the workman in the present case. Therefore there is no evidence from the workman

to prove that his resignation was obtained by the employer forcibly or that he had withdrawn his resignation letter by letter dated 2-8-97. There is also no evidence from the workman to prove that the employer refused employment to him from 1-8-97. In the circumstances the workman is not entitled to any relief hence I pass the following order.

O R D E R

It is hereby held that there is no refusal of employment by the management of M/s. Goa Investcast Limited, Kundaim, Goa to the workman Shri K. Shrinivas Kumar with effect from 1-8-97, but the workman Shri K. Shrinivas Kumar voluntarily resigned from the service from 1-8-97. It is hereby further held that workman Shri K. Shrinivas Kumar is not entitled to any relief.

No order as to cost. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/2000/1337

The following Award dated 20-2-2001 in Reference No. IT/54/96 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary.

Panaji, 9th March, 2001.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/54/96

Workmen Rep. by
All Goa General Employee Union,
P.O. Box No. 90,
Vasco-da-Gama, Goa. ... Workmen/Party I

V/s

M/s Prashant Polyconcrete
Products (P)Ltd.,
Kundaim Industrial Estate,
Kundaim, Ponda - Goa. ... Employer/Party II

Workmen/Party I - Represented by Adv. Shri T. Pereira.

Employer/Party II - Ex-Parte.

Dated: 20-2-2001.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 16-10-1996 bearing No. IRM/CON/PONDA/(76)/11499 referred the following dispute for adjudication by this Tribunal.

I. "Whether the action of the management of M/s. Prashant Polyconcrete Products (P) Ltd., Bhoma, Kundaim-Goa, in refusing employment to their workmen w.e.f. 1-1-96 employed at their factory at Bhoma, Kundaim amounts to lock-out ?

If not, to what relief the workmen are entitled ?"

II. Whether the demand of the workmen who were on the rolls of the Management of M/s. Prashant Polyconcrete Products (P) Ltd., Bhoma, Kundaim-Goa, as on 1-1-96 for full wages 1-1-96 onwards in absence of any notice of termination of services or any such action to employer-employee relationship, is legal and justified ?

If not, to what relief they are entitled in addition to wages ?

2. On receipt of the reference a case was registered under No. IT/54/96 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workmen/Party I (for short, "union") received the said notice and was represented by Adv. Shri T. Pereira. The Registered A/D notice issued to the employer/Party II (for short "employer") was returned unserved with postal endorsement, "factory closed". The union thereafter filed an application praying that the notice be issued at the Registered address of the employer at Bombay and accordingly the registered A/D notice was issued at the said address which was returned unserved with remark, "unclaimed". Thereafter another notice was sent to the employer at the Bombay address under certificate of posting, and the employer was also served at its factory address at Kundaim by substitute service namely by pasting the notice on the door of the factory premises with the help of the bailiff. Inspite of the said notices none appeared on behalf of the employer though opportunities were given and therefore the case was proceeded ex-parte against the employer on 30-7-97.

3. The Claim Statement filed by the union is at Exb. 5. The facts of the case in brief as pleaded by the union are that the workmen involved in the dispute are its members and they are employed in the factory of the employer situated at Bhoma, Kundaim-Goa. That the said factory was started in the year, 1986 and in that factory the employer manufactures products like wash basins, bath

tubs, flooring tiles, kitchen tiles, idols etc. and it runs in only shift, that is the general shift. That the factory was running at full capacity from the year 1986 till 30-12-1995. That the workmen were paid their salaries for the month of November, 1995 but the bonus for the financial year 1994-95 which was to be paid on or before 30-11-95 was not paid till 30-12-95. That as usual the workmen reported for duties on 1-1-96 at about 8.15 a.m. and they were shocked to find the factory's main gate locked, and on enquiries it was learnt that the management had put the lock on 31-12-1995 which was Sunday and that the watchmen/security personnel were informed to refuse entry to any of the workmen in the factory premises. That as on 30-12-95 goods produced by the employer worth Rs. 80 to 90 lakhs were inside the factory premises and they were not taken out because of the Rules and Regulations of the Excise Department. That the union had effectively terminated the settlement dated 19-1-93 which was for the period from 1-1-1993 to 31-12-1995 by letter dated 27-11-1995 and a fresh charter of demands was submitted to the employer by the union vide letter dated 21-12-1995. That instead of holding bilateral discussions the employer took sudden and unexplained decision to lock the factory gate on 31-12-1995 which was a Sunday. That by letter dated 3-1-1996 the union protested about the illegal lockout of the factory and by reply dated 10-1-1996 the employer denied that there was any lockout and offered to negotiate in order to settle the problem. The union contended that the action of the employer of locking the gates of the factory on 31-12-1995 thereby preventing the entry to the workmen in the factory premises from 1-1-1996 and refusing employment to the workmen w.e.f. 1-1-1996 amounts to imposition of lock out which is illegal and unjustified. The union stated that all the workmen have been reporting at the factory gate on every working day at usual working time at 8.15 a.m. to find out whether the lock out is lifted or not but employer has continued with the said illegal action. The union stated that the workmen continue to be the employees of the employer and their names are borne on the muster roll and also all the licences, permissions, approval and registrations of the factory continue in full force. The union stated that the employer failed to attend the conciliation proceedings initiated by the Asst. Labour Commissioner, Ponda, despite notices, and as such the conciliation ended in failure. The union claimed that the workmen are entitled to all the benefits and full wages from 1-1-1996 till the illegal lockout is lifted by the employer and production is resumed.

4. The case was proceeded ex-parte against the employer in the circumstances mentioned above and subsequently ex-parte evidence of the union was recorded. The union examined two witnesses namely the workmen Mr. Vijay Vengurlekar and Mr. Rock Fernandes, the treasurer of the union. Mr. Vijay Vengurlekar has stated in his deposition that the factory of the employer was started at Bhoma, Kundaim in the year, 1983 wherein Polyconcrete products such as tiles, wash basins, bath tubs etc., are manufactured. He has stated that about 30 production helpers were working in the factory including

him and that two carpenters were working on contract basis for packing the finished goods and 8 security personnel also on contract basis. He has stated that all the 30 production helpers including him were the members of All Goa General Union that is, the union in the present case. He stated that the employer has its own certified standing orders and he produced the copy of the same at Exb. W-1. He also produced the settlements dated 16-2-90 and 19-1-93 signed by the employer with the union at Exb. W-2 colly. He produced the certificate dated 10-10-97 at Exb. W-3 issued by Mr. Gopinath Rao, the Vice President of the Union to the effect that he is the Asst. Secretary of the Union. He also produced the notice dated 27-11-95 at Exb. W-4 given by the Union to the employer terminating of the settlement dated 19-1-1993 and stated that by letter dated 21-12-95 the union raised charter of demands on the employer. He has stated that the production in the factory was running in full swing till December, 1995 and that when he alongwith the other workers reported for work on 1-1-96 they found that a lock was put to the gate of the factory and there were some security staff in the cabin situated near the gate. He has stated that when they made enquiries with the security staff they were told that the lock was put by the Director Mr. Mahesh Sawant on the previous day. He has stated that when the workers used to report for work they used to sign the attendance card and that the said cards are with the employer. He has stated that the goods manufactured till 31-12-1995 are lying in the factory premises which are of the value of Rs. 95 lakhs. He has stated that the union gave notice to the employer on 3-1-1996 and he produced the copy of the said notice at Exb. W-5. He also produced the reply dated 10-1-1996 at Exb. W-6, given by the employer to the union. He has stated that on receipt of the reply the union wrote a letter dated 12-1-1995 to the Asst. Labour Commissioner, Ponda, and he produced the copy of the same at Exb. W-7. He has stated that the conciliation proceedings help by the Asst. Labour Commissioner ended in a failure and he produced the records of the conciliation proceedings at Exb. W-8 colly, and the failure report at Exb. W-9. He has stated that the employer never gave any notice of closure to the workmen or of lay off or lock out nor any notice of termination of service was given to them. He has stated that when the factory was locked out, out of 30 production helpers 4 had already resigned and he has produced the list of the production helper at Exb. 10 who were working in the factory as on 31-12-95 and their wage slips at Exb. W-11 colly. The other witness examined by the union is its Treasurer Mr. Rock Fernandes. He has stated that the employer has its factory at Bhoma and the workers of the employer are the members of his union. He has stated that he and Mr. Betkikar the President of the union used to attend to the work of the workers. He has stated that the union had submitted charter of demands dated 21-12-95 to the employer with a copy to the Labour Commissioner, Dy. Labour Commissioner, Panaji, and to the Local Committee. He produced the copy of the charter of demands at Exb. W-12 and stated that the said fresh charter of demands was submitted because the earlier Agreement which was expiring on 31-12-95 was

terminated. He has stated that prior to submitting to the charter of demands the production of the employer was good. He has stated that on 1-1-96 the union received a message from the workers that the factory was closed by the employer and they have been refused employment and that on receipt of the said message letter dated 3-1-96 Exb. W-5 to the employer. He has stated that the employer did not issue notice of closure, lockout, lay off or retrenchment to the workers.

5. The evidence of the union, oral as well as documentary has gone unchallenged. The union has produced the letter dated 19-1-1990 Exb. W-1 addressed by the Dy. Labour Commissioner and Certifying Officer to the employer and the union informing that the Standing Orders of the employer have been duly certified by him. The Union has also produced the settlements dated 16-2-1990 and 19-1-1993 at Exb. W-2 colly. These settlements are signed by the management of the employer with the union in respect of the demands raised by the union on behalf of the workers of the employer. Both the above said documents thus establish that the union namely the All Goa General Employees Union is the representative union of the workers of the employer and hence has the right to raise the present dispute on behalf of the workmen.

6. It is contention of the union that the employer refused employment to the workers from 1-1-1996 and that the said refusal amounts to lock out and since the services of the workmen are not terminated nor there is severance of employer-employee relationship the workmen who were on the rolls of the management as on 1-1-96 are entitled to full wages from 1-1-96 onwards. Both the witnesses examined by the employer have stated that the workmen were refused employment from 1-1-1996. One witness is the workman who was working as the production helper and the other witness is the treasurer of the union. There is no contrary evidence in this respect. The order of reference made by the Government also states that the refusal of employment is from 1-1-1996. Now the question is whether this refusal amounts to lock out as contended by the Union and if it is so whether the workmen are entitled to full wages from 1-1-96 onwards. Lock out has been defined under Section 2(1) of the Industrial Disputes Act 1947 as under:

"Lockout" means the temporary closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any member of persons employed by him.

From the above definition it can be seen that in the case of lock out there is temporary closing of place of employment, and not the closure business. In the case of closure the employer does not merely close the place of employment but closes the business itself. Therefore it is to be seen whether the evidence which has been led by the union shows that it is merely the closing of the place of the employment by the employer and not the closing of the business itself so as to bring the case of the union within the meaning of lock out.

7. The witness Shri Vijay Vengurlekar examined by the employer has stated that he was working in the employer's factory at Bhoma as a production helper, and that including him about 30 persons were working in the factory as the production helpers. He has stated that the union had terminated the earlier settlement dated 19-1-93 by notice dated 27-11-95 (Exb. W-4) and submitted fresh charter of demands vide letter dated 21-12-95. He has stated that on 1-1-1996 when he alongwith other workers went to the factory they found a lock put to the outside gate of the factory and there were some security staff in the cabin situated near the gate, and that when the enquiries were made they were informed that the Director Mr. Mahesh Sawant had put the lock on the previous night. He has produced the copy of the letter dated 3-1-96 (Exb. W-5) addressed to the employer by the union as well as the reply dated 10-1-96 (Exb. W-6) of the employer to the union. I have gone through the said reply of the employer. In the said reply the employer did not admit the contention of the union that the factory was locked out. The employer stated in the said reply that the workers had assaulted and manhandled their staff members and as a result the staff members had refused to attend the factory unless the management gives assurance of safety of their life. The employer stated that the management was unable to give such an assurance because the workers were creating problems time and again by manhandling and assaulting over petty problems, and since no responsible person was available in the factory, the same was closed and the employer further stated that the factory would be opened when the managerial staff would be available. From this reply of the employer it can be seen that the employer had closed their business by closing the factory itself. The fact of closing of the factory is admitted by the employer's witness Shri Rock Fernandes, the Treasurer of the union. He has stated that on 1-1-1996 the union received a message from the workers that the employer had closed its factory and the workers were refused employment. Therefore it was the case of the workers that there was closure of the factory by the employer resulting into refusal of employment to them. The other witness of union Shri Vijay Vengurlekar has also stated in his evidence that their demand before the Asst. Labour Commissioner was that the employer should re-start the factory and take back in service. Thus it has come in the evidence of the union itself that there was not merely the closure of the place of employment, but the closure of the business itself by closing the factory. The Union's witness Mr. Vengurlekar has stated that when the employment was refused to him, in the office of the employer one Mr. Lobo was working as the production Manager, Mr. Vivek Sawant, Mr. Sanjay Sawant, Mr. Anil Desai and Mr. Nilesh Keni were working as Supervisors; Mr. Vilan Kolwekar, Mr. Anil Kumble were working as Accountants and Smt. Sugandha Gaude and Smt. Susheela Naik were working as Sweepers. He has stated that besides them two carpenters were working in the factory on contract basis and also 8 security personnel were engaged on contract basis. However, no evidence whatsoever has been brought on record by the union to show that the above said persons continued to work with

the employer in the factory even after 1-1-1996. Infact not a single word has been spoken by either of the witness on this aspect. It is also not the case of the union that by closing the factory at Bhoma the employer carried on their manufacturing activities at some other place. Therefore in my view the evidence establishes that the employer had not closed its place of employment but infact had closed their business itself. The Supreme Court in the case of Express News Papers Ltd., V/s Their Workers and Staff and Others reported in 1962 II LLJ 227 the Supreme Court has held that in dealing with the question whether the act of closure really amounts to a closure properly so called or whether it is a disguise for a lock out, the Industrial Tribunal has to take into account several relevant facts and these facts may be proved before the Industrial Tribunal either by oral evidence or by documentary evidence and by evidence of conduct and circumstances. In the present case besides the evidence which is discussed above there is also circumstantial evidence which shows that the factory of the employer is closed. The circumstantial evidence is that after the reference was received Registered A/D notice was issued to the employer at their factory address. The said notice was returned unserved with endorsement, "factory closed". The said endorsement is dated 7-11-96, which shows that there was no one in the factory to accept the notice. The employer had to be served substituted service that is by affixing the notice on the door of the factory premises on 18-3-97. This shows that the factory continued to be closed from 1-1-96 and it remained closed even on the date, that is, on 18-3-97 when the notice was affixed on the main door of the factory premises.

8. As per reply dated 10-1-96 Exb. W-6 of the employer, the factory was required to be closed because their staff members were manhandled and assaulted and the staff members were not prepared to attend the factory unless the management gave assurance of safety of their life and the management was unable to do so. The union has tried to link the closing of the factory with the submitting of the charter of demands. The Supreme Court in the case of M/s. Indian Hume Pipe Company Ltd., V/s Their Workmen reported in AIR 1968 SC 1002 has held that once the Tribunal finds that the employer has closed his factory, as a matter of fact, it is not concerned to go into the question as to the motive which guided him to close the factory. In another case that is, in the case of M/s. Tatanagar Foundary Company Ltd., V/s Their Workmen reported in AIR 1970 SC 1960 the Supreme Court has held that the motive of closure is immaterial and what is to be seen is whether the closure is an effective one. The employer in their reply dated 10-1-96 Exb. W-6 has stated that the factory will be opened when the managerial staff will be available. The Supreme Court in the case of General Labour Union (Red Flag) Bombay V/s B.V. Chavan and others reported in 1985 Lab. I.C. 726 in para 11 of its judgment has held that while examining whether the employer has imposed a lockout or has closed the industrial establishment, it is not necessary to approach the matter from this angle that the closure has to be irrevocable, final and permanent and that the lockout is

necessarily temporary or for a period, and that the employer may close down industrial activity bona fide on such eventualities as suffering continuous loss, no possibility of revival of business or inability for various reasons to continue the industrial activity. The Supreme Court held that to say that the closure must always be permanent and irrevocable is to ignore the causes which may have necessitated closure and change of circumstances may encourage an employer to revive the industrial activity which was really intended to be closed. The Supreme Court has further held that the duration of the closure may be a significant fact to determine the intention and bonafides of the employer at the time of closure but is not decisive of the matter. In the present case it is the case of the union itself that the factory was closed on 1-1-96. It continued to remain close even on the date 18-3-97 when the bailiff of this Tribunal affixed notice on the door of the factory premises. Further the evidence of the last witness of the employer was recorded on 8-5-98. None of the witness of the employer stated that after 1-1-96 the factory was re-started by the employer at any time. Thus the evidence on record shows that the duration of the closing of the factory is more than 2 years, which shows the intention and bonafides of the employer.

9. The Union has raised the issue through its evidence that no notice of closure or lockout or retrenchment was given by the employer. The question of giving notice of lockout did not arise because the employer did not admit that the factory was locked out. As mentioned earlier the employer's case as is evident from the reply dated 10-1-96 Exh. W-6, is that the factory was closed. Now as regards the question of giving notice of closure or retrenchment and paying retrenchment compensation, closure is not the same as retrenchment. In the case of retrenchment, unless prior conditions as laid down in Section 25F of the I.D. Act 1947 are complied with, the retrenchment is illegal. The Supreme Court in the case of Sangosh Gupta V/s State Bank of Patiala reported in AIR 1980 SC 1219 has held that the termination of the services of the workman as a consequence of closure is to be treated as retrenchment for the purpose of notice, compensation etc. This means that it is treated as retrenchment only for the purpose of notice and payment of compensation as per Section 25F of the I.D. Act, 1947. In another case that is in the case of M/s Avon Services Production Agency Pvt. Ltd., reported in AIR 1979 SC 170, the Supreme Court has held that giving of notice and payment of compensation as provided in Section 25F of the Act is not a condition precedent in case of closure as otherwise it is the case of retrenchment. This being the case the closure does not become illegal for not giving prior notice of not paying compensation. In the circumstances, I hold that the action of the employer in refusing employment to their workmen from 1-1-1996 at their factory at Bhoma, Kundaim, does not amount to lockout, and consequently the demand of the workmen who were on the rolls of the employer as on 1-1-1996 for full wages from 1-1-1996 onwards is not legal and justified. I hold that the refusal of employment to the workmen who were on the rolls of the employer as on 1-1-1996 is on account of the closure of the factory from

1-1-1996 and hence if at all the workmen will be entitled to closure compensation as provided under Section 25FFF of the Industrial Disputes Act, 1947.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the action of the management of M/s. Prashant Polyconcrete Products (P) Ltd., Bhoma, Kundaim-Goa, in refusing employment to their workmen w.e.f. 1-1-96 employed at their factory at Bhoma, Kundaim does not amount to lock-out. It is hereby further held that the demand of the workmen on the rolls of the Management of M/s Prashant Polyconcrete products (P) Ltd., Bhoma, Kundaim-Goa, as on 1-1-96 for full wages from 1-1-96 onwards is not legal and justified.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/2000/2001/1635

The following Award dated 12-3-2001 in Reference No. IT/67/96 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary.

Panaji, 30th March, 2001.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/67/96

Shri Jaiprakash M. Borkar,
Bhag, Curchorem Goa. ... Workman/Party I

V/s

Shri Salvador Fernandes,
Salcon House, Pontemol,
Curchorem Goa, ... Employer/Party II

Workman/Party I represented by Shri P. Gaonkar.

Employer/Party II represented by Adv. Shri M. P. Fernandes.

Panaji, dated: 12-3-2001.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa by order dated 6-11-1996 bearing No. IRM/CON/SG/(40)/96/11874 referred the following dispute for adjudication to this Tribunal.

"Whether the action of the employer Shri Salvador Fernandes, Curchorem, in terminating the services of the Shri Jaiprakash M. Borkar, Clerk, with effect from 1-2-1996, is legal and justified?"

2. On receipt of the reference, a case was registered under No. IT/67/96 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party-I (for short, "workman") was represented by Shri P. Gaonkar and the Employer/Party II (for short "employer") was represented by Adv. Shri M.P. Fernandes. The workman filed his statement of claim at Ext. 3. The facts of the case in brief as pleaded by the workman are that he was working with the employer as a Clerk cum Supervisor from 6-1-1991. That the employer is engaged in the business of supplying earth moving machinery and the said machinery is given on contract at the mine of M/s. Sesa Goa. That the employer terminated the services of the workman w.e.f. 1-2-96 illegally and without paying his legal dues. That the employer also did not hold any enquiry before terminating his services. The workman claimed that the termination of his service by the employer is illegal and unjustified and therefore he is entitled to reinstatement in service with full back wages and other benefits.

3. The employer filed written statement at Ext. 5. By way of preliminary objections employer stated that the workman was never in his employment in any capacity at any time. The employer stated that he is not an industrial establishment as defined under the Industrial Disputes Act, 1947 and therefore the reference is not maintainable. The employer also stated that without prejudice to the above contentions the workman is not a "Workman" as defined under the Industrial Disputes Act, 1947. The employer denied that the workman was employed with him as a Clerk cum Supervisor w.e.f. 6-1-1991 or at any other time. The employer stated that since the workman was not employed with him the question of terminating his services or paying his legal dues or conducting an enquiry before terminating the services did not arise. The employer stated that claim made by the workman is false, bogus, fabricated and imaginary. The employer denied that the workman is entitled to any relief as claimed by him and stated that the reference is liable to be rejected.

4. On the pleadings of the parties following issues were framed:

1. Whether the Party I proves that he was employed with the Party II as a clerk cum Supervisor w.e.f. 6-1-1991 ?

2. Whether the Party I proves that the action of the Party II in terminating his services with effect from 1-2-1996 is illegal and unjustified ?
3. Whether the Party II proves that there is no employer-employee relationship between the Party II and the Party I and hence the reference is not maintainable ?
4. Whether the Party II proves that the Party I is not a workman under the I.D. Act, 1947 ?
5. Whether the Party II proves that it is not an Industrial establishment and hence the provisions of I.D. Act, 1947 are not applicable ?
6. Whether the Party I is entitled to any relief ?
7. What Award ?

My findings on the issues are as follows:

Issue No. 1 : In the negative.

Issue No. 2 : Does not arise.

Issue No. 3 : In the affirmative.

Issue No. 4 : Does not arise.

Issue No. 5 : In the negative.

Issue No. 6 : Does not arise.

Issue No. 7 : As per Order below.

REASONS

5. *Issue No. 5:* In the written statement the employer took the defence that his establishment is not an industrial establishment as defined under the Industrial Disputes Act, 1947 and therefore the provisions of the Industrial Disputes Act, 1947 are not applicable to him. The burden to prove this fact was cast on the employer as by raising this defence the employer wanted to oust the jurisdiction of this Tribunal. The employer has led evidence by examining Mr. Elton Fernandes, the Power of Attorney of the employer. In his evidence he has only produced the Power of Attorney executed in his favour by the employer who is his father and he has deposed only to the extent of denying the employer-employee relationship between the employer and the workman. There is no evidence from the employer to show that his establishment does not fall within the meaning of "industrial establishment" as defined under the Industrial Disputes Act, 1947. Therefore in the absence of any evidence from the employer it has to be held that the employer has failed to prove that his establishment is not an industrial establishment and the provisions of Industrial Disputes Act, 1947 are not applicable to him, and I hold so accordingly. In the circumstances, I answer the issue No. 5 in the negative.

6. *Issue Nos. 1 and 3:* Both these issues are taken up together because they are inter-related. The workman in his statement of claim contended that he was working

with the employer as a clerk cum supervisor from 6-1-1991, and that his services were illegally terminated with effect from 1-2-1996. The employer in his written statement denied that the workman was employed with him at any time. The employer contended that there was no employer-employee relationship between him and the workman, and that therefore the reference is not maintainable. In view of the denial on the part of the Employer, the burden was on the workman to prove he was working with the employer as a Clerk-cum supervisor from 6-1-1991. The workman was given opportunities to lead evidence on his behalf and prove his employment with the employer. However he failed to do so and hence ultimately his evidence was closed on 15-10-98. Subsequently the workman filed an application dated 27-11-98 praying for setting aside the order dated 15-10-98 whereby his evidence was closed. After hearing the parties, this Tribunal passed the Order dated 16-2-99 dismissing the application filed by the workman. Consequently there is no evidence from the workman in this case. The employer on the other hand has led evidence by examining his son Mr. Elton Fernandes, his Power of Attorney. He has stated that the business is being looked after by his father and the family members including him. He stated that the workman was never in the employment of the employer, that is, his father. In his cross-examination only suggestions were put to the effect that the workman was working with the employer from 1991 to 1996; that he used to go for purchase of shovel that he was preparing bills. All these suggestions have been denied by the witness. It is well settled that putting mere suggestions do not prove anything. The workman did not make any attempt to call for the documents from the custody of the employer to prove his employment. In the absence of any evidence from the workman oral as well as documentary, I have no reason to disbelieve the statement of the employer's witness Mr. Elton Fernandes, which is made on oath. In the circumstances I hold that the workman has failed to prove that he was employed with the employer as a clerk cum supervisor and hence I answer the issue No. 1 in the negative. I further hold that the employer has succeeded in proving that there was no employer-employee relationship between the employer and the workman.

7. Now the question is if there is no employer employee relationship whether the reference is maintainable. The Bombay High Court in the case of Iqbal Ahmed Kamruddin V/s. First Labour Court, Thane and another reported in 1992 I L.L.N. 730 in para 8 of its Judgement has held that a reference by the Government can be only of an industrial dispute and if what is referred to the Tribunal is not an industrial dispute it is always open to a party to show to the forum that the dispute referred for adjudication, though purported to be an industrial dispute, is in reality not an industrial dispute at all. The High Court held that it is always permissible for an employer to raise an issue as to whether what has been referred is an industrial dispute at all and there can be no question of Tribunal being bound by the order of reference, as the appropriate Government makes the reference upon

a prima facie view of the matter as to the existence or apprehension of an industrial dispute. The facts of the case before the Bombay High Court are similar to the one in the present case. In that case also the employer had denied that the concerned employee was in their employment. Only oral evidence was led before the Labour Court by the parties. The Labour Court held that the concerned employee had neither produced any document nor had made any application for production of the documents in possession of the employer. On assessing the evidence the Labour Court held that the concerned employee had failed to establish that he was in employment of the employer and therefore the Labour Court rejected the demand in the reference. The Bombay High Court in Writ petition filed by the concerned employee against the Award upheld the findings of the Labour Court.

8. In the present case the case of the workman is on a bad footing than the case of the employee in the case before the Bombay High Court. In the instant case there is absolutely no evidence from the workman oral or documentary. The oral evidence of only the employer is on record. In this case also the workman did not ask for production of documents in possession of the employers nor produced any documents. On assessing the evidence, I have held that the employer has succeeded in establishing that there is no employer employee relationship in the instant case. As held by the Bombay High Court in the above referred cases, there can be a reference only of an industrial dispute. Section 2(k) of the Industrial Disputes Act, 1947 defines Industrial Dispute as follows:

"2(k) 'industrial dispute' means any dispute or difference between employers and employees or between employers and workmen or between workmen and workmen, which is connected with employment or non-employment or the terms of employment or with conditions of Labour of any person."

From the above definition it is therefore clear that in order to constitute industrial dispute in the present case, there ought to have been employer-employee relationship between the workman and the employer. This is the basic requirement and if this requirement is missing, there is no industrial dispute. It has been already held by me that in the present case there is no employer-employee relationship between the workman and the employer. This being the case the dispute referred by the Government for adjudication does not fall within the meaning of "industrial dispute" as defined under Section 2(k) of the Industrial Disputes Act, 1947 and therefore the reference made by the Government is not maintainable and is liable to be rejected, and I hold so accordingly. In the circumstances I hold that the employer has succeeded in establishing that the reference is not maintainable and hence I answer the issue No. 3 in the affirmative.

9. Since it has been held by me that the reference is not maintainable and that the same is liable to be

rejected, the question of deciding the other issues or granting any relief to the workman does not arise. I therefore answer the issue Nos. 2, 4 and 6 accordingly.

In the circumstances I pass the following order.

ORDER

It is hereby held that the reference made by the Government is not maintainable as there is no industrial dispute. The reference made by the Government is therefore rejected.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/2000/2001/1636

The following Award dated 21-3-2001 in Reference No. IT/10/2001 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary.

Panaji, 30th March, 2001.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. Case No. IT/10/2001

Shri Raghuvir Gaude,
Rep. by the President,
Goa Trade & Commercial
Workers' Union,
Velho's Bldg., 2nd Floor,
Panaji Goa.

... Workman/Party I

V/s

M/s. Vel Vin Packaging,
D 2/14, Corlim Industrial
Estate, Corlim,
Ilhas Goa.

... Employer/Party II

Workman/Party I represented by Adv. Shri Suhas Naik.

Employer/Party II represented by Shri R. Rathaboli.

Panaji, dated: 21-3-2001.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa by order dated 5-1-2001 bearing No. IRM/CON/(81)/99/154 referred the following dispute for adjudication of this Tribunal.

1. "Whether the action of the management of M/s. Vel Vin Packaging, Corlim Industrial Estate, Corlim, Goa, in refusing employment to Shri Raghuvir Gaude, workman with effect from 27-9-1999, is legal and justified ?
2. If not, to what relief the workman is entitled ?

On receipt of the reference, the case was registered under No. IT/10/2001 and registered A.D. notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party I was represented by Goa Trade and Commercial Workers' Union (for short 'Union') and the employer/Party II was represented by Shri R. Rathaboli. Both the parties submitted that the dispute is being settled and accordingly the case was fixed on 19-3-2001 for filing the terms of settlement in this Tribunal. Accordingly on 19-3-2001 the workman Shri Raghuvir Gaude appeared along with Adv. Shri Suhas Naik representing the Union and the employer/Party II was represented by Shri R. Rathaboli. Both the parties submitted that the dispute has been amicably settled and they filed the memorandum of settlement at Ext. 4 dated 16-3-2001 duly signed by the parties. They also filed an application praying that an award be passed in terms of the said settlement. I have gone through the terms of the settlement which are duly signed by the parties and I am satisfied that the said terms are certainly in the interest of the workman Shri Raghuvir Gaude. I, therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 16-3-2001 Ext. 4.

ORDER

1. That the termination of services effective from 27-09-99 of Mr. Raghuvir Gaude (hereinafter referred to as workman) shall stand;
2. In lieu of reinstatement with continuity of service and full back wages, the workman shall be paid a sum of Rs. 14,000/- (Rupees fourteen thousand only) in full and final settlement;
3. That the payment as per Clause 2 above shall be made immediately after execution of this settlement;
4. That in consideration of the amount as specified in Clause 2 above which the Company has agreed to pay, the workman shall have no other claim against the Company, monetary or otherwise and that this payment shall be deemed to be in full

and final settlement of the claim of the workman for reinstatement in employment with continuity of service and full back wages and that this fully settles the dispute and that the workman shall have no claim of whatsoever nature in this regard and further the workman shall have no claim either for reinstatement or re-employment with the Company at anytime in future.

5. It has been agreed by the Union and the workman that workman authorises the management to deduct Rs. 1000/- at source and forward to the Goa Trade and Commercial Workers' Union.
6. That the parties shall approach the Honourable Industrial Tribunal requesting to pass an award in terms of the settlement in the pending Reference (IT/10/2001).

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
 Presiding Officer,
 Industrial Tribunal.

Order

No. CL/Pub-Awards/2001/1899

The following Award dated 4-4-2001 in Reference No. IT/40/2000 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary.

Panaji, 24th April, 2001.

**IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI**

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/40/2000

Workmen represented by the President, Goa Mazdoor Union, Post Box No. 119, Dourado Building, 1st Floor, Near Municipal Market, Vasco-da-Gama. ... Workman/Party-I

V/s

M/s. Kores (India) Ltd., Carbon Unit, Shed No. 52, Plot No. L-71, Verna

Electronic City, Verna Goa. ... Employer/Party-II

Workmen/Party I represented by Adv. Shri H. Dourado.

Employer/Party II represented by Adv. Shri M.S. Bandodkar.

Panaji, dated: 4-4-2001.

AWARD – Part II

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa by order dated 4-5-2000 bearing No. IRM/CON/(92-4A)/99/2422 referred the following dispute for adjudication to this Tribunal.

- (1) Whether the action of the management of M/s. Kores (India) Limited, (Carbon Unit), Verna Goa, in dismissing the following workmen from the services with effect from 3-2-2000, is legal and justified ?
 1. Nilesh Naik, Cutter.
 2. Piedade Dias, Trainee.
 3. Anand Haldankar, Unwinder.
 4. Paresh Sawant, INK Mixer Operator.
- (2) If not, to what relief the above four workmen are entitled ?
2. On receipt of the reference, the case was registered under No. IT/40/2000 and registered A.D. notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workmen/Party I (for short, 'Union') was represented by Adv. Shri H. Dourado, who is also the President of the Union namely Goa Mazdoor Union. The employer/Party II (for short 'employer') was represented by Adv. Shri M.S. Bandodkar. The case was fixed for filing of the statement of the claim on behalf of the workmen. Both the parties however submitted that the matter is likely to be settled and accordingly at their request the case was fixed on 27-2-2001 at 10-30 a.m. for filing of the terms of settlement.

3. Accordingly on 27-2-2001, the date on which the case was fixed for hearing, Adv. Shri Dourado appeared along with workmen Shri Anand Haldankar, Shri Paresh Sawant, Shri Piedade Dias and Adv. Shri M.S. Bandodkar appeared on behalf of the employer. They submitted that a settlement was arrived at with reference to the said 3 workmen and they filed the terms of settlement dated 27-2-2001 at Ext.-4 and they prayed that consent award be passed in terms of the said settlement. Accordingly Award Part-I dated 1-3-2001 was passed by this Tribunal in relation to the above said 3 workmen in terms of the settlement dated 27-2-2001 Ext.-4 Subsequently on 22-3-2001 Adv. Shri Dourado appeared along with the

workman Shri Nilesh Naik and Adv. Shri Bandodkar appeared on behalf of the employer. They submitted that the dispute with the workman Shri Nilesh Naik was amicably settled vide settlement dated 22-3-2001 and they filed the terms of settlement at Ext.-6. Both the parties prayed that consent award be passed in respect of the workman Shri Nilesh Naik in terms of the said settlement. I have gone through the terms of the settlement and I am satisfied that the said terms are certainly in the interest of the workman Shri Nilesh Naik. The said terms of settlement are duly signed by Adv. Shri Dourado as the President of the Union along with the workman Shri Nilesh Naik and Shri Ravi Kandoi, the constituted attorney of the employer has signed the said terms on behalf of the employer. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 22-3-2001 Ext. 6 which is in relation to the workman Shri Nilesh Naik.

ORDER

It is agreed between the parties that following workman who is concerned in the reference shall be paid an amount mentioned against his name in full and final settlement of his claims arising out of his employment with the company and arising out of the reference.

<u>Name</u>	<u>Amount in Rs.</u>
Nilesh Naik	Rs. 7000/- (rupees seven thousand only).

It is further confirmed by the workman concerned in the reference that in view of the clause No. (1) above he shall have no claim of whatsoever nature against the company including any claim of reinstatement of re-employment.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
 Presiding Officer,
 Industrial Tribunal.

Order

No. CL/Pub-Awards/2001/1900.

The following Award dated 17-4-2001 in Reference No. IT/37/2000 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary.

Panaji, 23rd April, 2001.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/37/2000

Workmen rep. by the President,
 Goa Mazdoor Union,
 Post Box No. 119,
 Dourado Building, 1st Floor,
 Near Municipal Market,
 Vasco-da-Gama, Goa. ... Workman/Party I

V/s

M/s. Kores (India) Ltd.,
 Carbon Unit, Shed No. 52,
 Plot No. L-71,
 Verna Electronic City,
 Verna Goa-403722 ... Employer/Party II

Workman/Party I represented by Adv. Shri H. Dourado.

Employer/Party II represented by Adv. Shri M.S. Bandodkar.

Panaji, dated: 5-4-2001.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa vide order dated 4-5-2000 bearing No. IRM/CON/(92-1A)/99/2421 referred the following dispute for adjudication to this Tribunal.

- (1) Whether the action of the management of M/s. Kores (India) Limited, (Carbon Unit), Verna-Goa, in terminating the services with effect from 19-1-2000 of the following workmen is legal and justified ?
 - (1) Ms. Meena Naik, Packer
 - (2) Ms. Anita Morudkar, Packer
 - (3) Ms. Sharmila Vernekar, Packer
 - (4) Ms. Sukanti Naik, Packer
 - (5) Ms. Bernadette D'Mello, Packer
- (2) If not, to what relief the above five workmen are entitled ?

2. On receipt of the reference a case was registered under No. IT/37/2000 and registered A.D. notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workmen/Party-I (for short, "Union") was represented by Adv. Shri H. Dourado, who is also the President of the Union namely Goa Mazdoor Union. The employer/Party II (for short "employer") was represented by Adv. Shri M.S. Bandodkar. The case was fixed for filing of the statement of claim on behalf of the Union. Both the parties however submitted that the matter is likely to be settled and accordingly at the request of the parties the case was fixed on 22-3-2001 at 10.30 a.m. for filing of the terms of settlement.

3. Accordingly on 22-3-2001 Adv. Shri Dourado appeared along with the workmen Ms. Meena Naik, Ms. Anita Morudkar, Ms. Sharmila Vernekar, Ms. Sukanti Naik and Ms. Bernadette D'Mello (for short "workmen") and Adv. Shri M.S. Bandodkar appeared on behalf of the employer. They submitted that the dispute between the parties was amicably settled and they filed the terms of settlement dated 22-3-2001 at Ext.-4. Both the parties also filed an application dated 22-3-2001 praying that consent award be passed in terms of the said settlement. I have gone through the terms of the said settlement which are duly signed by the parties and I am satisfied that the said terms are certainly in the interest of the workmen. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 22-3-2001 Ext. 4.

ORDER

- It is agreed by the workmen that since they have already joined Topline Writing Instruments Pvt. Ltd. as permanent employees w.e.f. the dates mentioned below, their entire claim against Kores (India) Ltd. Carbon unit, Verna, Goa have been fully and satisfactorily settled and that they have no dispute of whatsoever nature against Kores (India) Ltd. Carbon unit, Verna.

Name	Dt. of retrenchment	Dt. of Joining
1. Meena Naik	14-1-2000	01-6-2000
2. Sharmila Vernekar	14-1-2000	16-6-2000
3. Sukanti Naik	14-1-2000	—
4. Bernadette D'Mello	14-1-2000	21-1-2001
5. Anita Morudkar	14-1-2000	27-1-2001

- In so far as Miss Sukanti Naik is concerned it is agreed between the parties that since she is

already gainfully employed in 'Sinaris Music Shop's Panaji Goa, and having accepted the dues she does not press for the relief claimed in the reference. A copy of the letter is enclosed.

- In view of above, it is agreed between the parties that an application shall be made before the Industrial Tribunal Goa wherein ref. IT/37/2000/132 is pending for disposing matter.

No order as to cost. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/2001/2072

The following Award dated 20-4-2001 in Reference No. IT/92/2000 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary.

Panaji, 14th May, 2001.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/92/2000

Shri Surya R. Prabhu,
H. No 3, Post Vaddo,
Honda, Sattari Goa. ... Workman/Party I

V/s

M/s. Automobile Corporation
of Goa Ltd.,
Honda, Sattari Goa. ... Employer/Party II

Workman/Party I absent.

Employer/Party II represented by Adv. Shri M.S. Bandodkar.

Panaji, dated: 20-4-2001.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa by order dated 24-11-2000 bearing No. IRM/CON/(43)/2000/5896 referred the following dispute for adjudication of this Tribunal.

1. Whether the action of the Automobile Corporation of Goa Limited, in terminating the services of Shri Surya R. Prabhu, Operator, with effect from 6-7-1999, is legal and justified ?
2. If not, to what relief the workman is entitled ?

2. On receipt of the reference, a case was registered under No. IT/92/2000 and registered A.D. notice was issued to the parties. In pursuance to the said notice, Adv. Shri Bandodkar appeared on behalf of the employer/Party II (for short 'employer'). The registered A.D. notice to the workman/Party-I (for short workman) was returned unserved with endorsement "addressee out of station". Therefore another notice was sent to the workman under Certificate of posting which was duly received by the workman and he put in his appearance on 29-1-2001. At the request of the workman the case was adjourned on 22-2-2001 for filing of the claim statement by him. On this date the workman remained present but prayed for time to file the statement of claim and accordingly the case was fixed on 12-3-2001 for filing the statement of claim by the workman. On this date as well as on 27-3-2001 the workman sought time to file his statement of claim and he was given last opportunity to file his statement of claim on 16-4-2001. On this date the workman remained absent and only Adv. Shri Bandodkar appeared on behalf of the employer. Since the workman remained absent no statement of claim came to be filed on his behalf. Adv. Shri Bandodkar submitted that he does not want to file any statement of claim/written statement on behalf of the employer and submitted that since the workman has remained absent and has not filed the claim statement the reference cannot be answered in his favour. He prayed that an award holding termination of services of the workman as legal and justified be passed.

3. The reference of the dispute was made by the Government at the request of the workman as he challenged the action of the employer in terminating his services. It is a settled law that the party who challenges

the legality of the order or the action of the employer the burden lies on that party to prove that the order or the action is illegal. The Allahabad High Court in the case of V. X. Raj Industries V/s. Labour Court and others reported in 1981 (29 FLR 194) has held that the proceedings before the Industrial court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court but the principles underlying the said Act are applicable. The High Court has held that it is well settled law that if the party challenges the validity of an order the burden lies on him to prove the illegality of the order and if no evidence is produced, the party invoking the jurisdiction must fail. The High Court has further held that if the workman fails to appear or to file written statement or to produce evidence the dispute referred by the Government cannot be answered in his favour and he would not be entitled to any relief. Similar principles are laid down by the Bombay High Court in the case of V.N.S. Engineering Services V/s. Industrial Tribunal, Goa, Daman and Diu and another reported in F.J.R. Vol. 71 page 393. In this case, the Bombay High Court has held that the obligation to lead evidence to establish an allegation is on the party making an allegation, the test being that he who does not lead evidence must fail. The High Court further held that the provisions of Rule 10-B of the Industrial Disputes (Central) Rules, 1957 clearly indicates that the party who raises an industrial dispute is bound to prove the contentions raised by him and the Industrial Tribunal or the Labour Court would be erring in placing the burden of proof on the other party to the dispute.

4. In the present case, the dispute was raised by the workman that his services were illegally terminated and the reference was made by the Government at his instance. Therefore, applying the principles laid down by the Bombay High Court and the Allahabad High Court in the above referred cases, the burden was on the workman to prove that the action of the employer in terminating his services w.e.f. 6-7-99 was illegal and unjustified. Inspite of the opportunities given the workman did not file any statement of claim on his behalf. From the conduct of the workman it is evident that he is not interested in pursuing further with the matter. There is no material before me to hold that the action of the employer in terminating the services of the workman is not legal and justified. In the absence of any evidence the reference cannot be answered in favour of the workman. In the circumstances I hold that the workman has failed to prove that the action of the employer in terminating his services w.e.f. 6-7-99 is illegal and unjustified. I hold that the termination of services of the workman w.e.f. 6-7-99 is legal and justified.

Hence I pass the following order.

ORDER

It is hereby held that the action of M/s. Automobile Corporation of Goa Ltd. in terminating the services of the workman Shri Surya R. Prabhu, Operator w.e.f. 6-7-99 is legal and justified. It is hereby further held that the workman Shri Surya R. Prabhu is not entitled to any relief.

No order as to cost. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),

Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/2001/2074

The following Award dated 20-4-2001 in Reference No. IT/39/2000 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary.

Panaji, 14th May, 2001.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/39/2000

Workmen represented by the
President,
Goa Mazdoor Union,
Post Box No. 119,
Dourado Building, 1st Floor,

Near Municipal Market,
Vasco-da-Gama.

... Workmen/Party I

V/s

M/s. Kores (India) Ltd.,
Carbon Unit, Shed No. 52,
Plot No. L-71, Verna
Electronic City,
Verna Goa.

... Employer/Party II

Workmen/Party I represented by Adv. Shri H. Dourado.

Employer/Party II represented by Adv. Shri M.S. Bandodkar.

Panaji, dated: 20-4-2001.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, (Central Act 14 of 1947) the Government of Goa by order dated 4-5-2000 bearing No. IRM/CON/(92-2A)/99/2424 referred the following dispute for adjudication of this Tribunal.

1. Whether the action of the management of M/s. Kores (India) Ltd., (Carbon Unit), Verna-Goa, in terminating the services of the following workmen with effect from 18-1-2000, is legal and justified ?

1. Ms. Rosaria Vaz, Packer
2. Ms. Isabella Gonsalves, Packer
3. Ms. Maria Rodrigues, Packer
4. Ms. Savita Redkar, Packer
5. Ms. Veronica Afonso, Packer

2. If not, to what relief the above five workmen are entitled ?

2. On receipt of the reference a case was registered under No. IT/39/2000 and registered A.D. notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workmen/Party I (for short, 'Union') was represented by Adv. Shri H. Dourado and the employer/Party II (for short 'employer') was represented by Adv. Shri M. S. Bandodkar. Both the parties submitted that the dispute is being amicably settled between the parties and at their request the case was fixed on 22-3-2001 for filing the terms of settlement.

Accordingly on 22-3-2001 Adv. Shri Dourado appeared along with the workmen and Adv. Shri M. S. Bandodkar appeared for the employer. They submitted that the dispute between the parties was amicably settled and they filed the terms of settlement dated 22-3-2001. They also filed an application praying that the consent award be passed in terms of the settlement dated 22-3-2001. I have gone through the terms of the settlement which are duly signed by the parties. I am satisfied that the terms of the settlement are certainly in the interest of the workmen. I therefore accept the submissions made by the parties and pass the consent Award in terms of the settlement dated 22-3-2001 Ext. 4.

ORDER

- It is agreed by the workmen that since they have already joined Topline Writing Instruments Pvt. Ltd. as permanent employees w.e.f. the dates mentioned below. Their entire claim against Kores (India) Ltd. Carbon Unit, Verna, Goa have

been fully and satisfactorily settled and that they have no dispute of whatsoever nature against Kores (India) Ltd. Carbon Unit, Verna.

Name	Dt. of retrenchment	Dt. of Joining
1. Rosaria Vaz	18-01-2000	01-06-2000
2. Isabella Gonsalves	18-01-2000	01-06-2000
3. Maria Rodrigues	18-01-2000	01-06-2000
4. Savita Redkar	18-01-2000	01-06-2000
5. Veronica Afonso	18-01-2000	12-06-2000

2. In view of above, it is agreed between the parties that an application shall be made before the Industrial Tribunal, Goa wherein ref. IT/39/2000 is pending for disposing said matter.

No order as to cost. Inform the Government accordingly.

Sd/-
 (Ajit J. Agni),
 Presiding Officer,
 Industrial Tribunal.